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In The
Supreme Court of the United States

October Term, 1987

MARIE DUCHENEAUX,

v.

Petitioner,

SECRETARY OF THE INTERIOR
OF THE UNITED STATES,

Respondent.

JUNE ELLEN DUCHENEAUX LEDBETTER, LILLIAN
LYNN DUCHENEAUX, RIA ELAINE DUCHENEAUX SEA-
BOY, ORVILLE ROLLAND DUCHENEAUX, LARRY DOUG-
LAS DUCHENEAUX, DEANNE DUCHENEAUX MULLOY,
ALLEN THEODORE DUCHENEAUX, MARLENE KAY
DUCHENEAUX, SUPERINTENDENT OF CHEYENNE
RIVER AGENCY AND UNITED STATES BUREAU OF
INDIAN AFFAIRS,

Respondents.

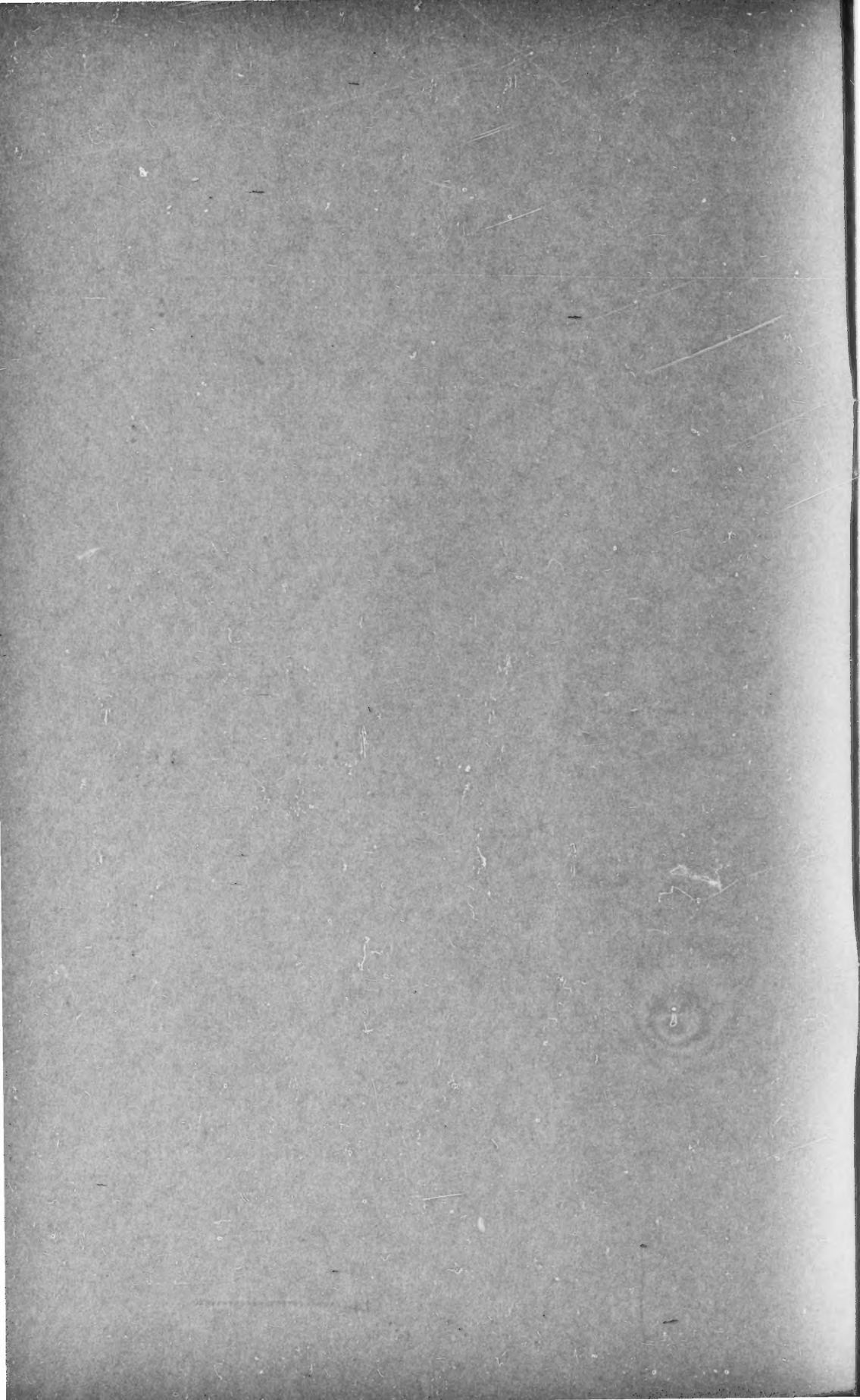
ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS
JUNE ELLEN DUCHENEAUX LEDBETTER, LILLIAN
LYNN DUCHENEAUX, RIA ELAINE DUCHENEAUX
SEABOY, ORVILLE ROLLAND DUCHENEAUX, LARRY
DOUGLAS DUCHENEAUX, DEANNE DUCHENEAUX
MULLOY, ALLEN THEODORE DUCHENEAUX, AND
MARLENE KAY DUCHENEAUX

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24/02



QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that the district court did not have jurisdiction under the Administrative Procedure Act, (APA) 5 U.S.C. §702, to divest the United States of title to land held in trust for Indians because the APA is preempted by the Quiet Title Act, 28 U.S.C. §2409(a)?

2. Whether the court of appeals erred in holding that the district court could not override the provisions of an Indian's validly executed will which had been approved by the Secretary of the Interior?

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OPINIONS BELOW

The opinion of the court of appeals' panel (Pet.App. 1a-12a) is reported at 837 F.2d 340. The opinion of the district court (Pet. App. 13a-27a) is reported at 645 F.Supp. 930.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 1988. The petition for a writ of certiorari was filed on April 18, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT

Douglas Ducheneaux, hereinafter Ducheneaux, a member of the Cheyenne River Sioux Tribe of South Dakota, married Petitioner, Marie Snoble, a non-Indian, in 1948. The couple spent most of their married life on the Cheyenne River Reservation where Ducheneaux owned, before the marriage, 160 acres of allotted land which was held in trust for him by the United States government. Ducheneaux and Petitioner lived as man and wife until 1971 when they separated and Petitioner moved off the reservation. During the marriage Ducheneaux acquired five quarter sections of Indian trust land from other members of the Cheyenne River Sioux Tribe and these interests were held in trust for him by the United States. Pet. App. 28a, 31a.

After Ducheneaux and Petitioner separated Ducheneaux began a divorce proceeding in the circuit court of South Dakota. The divorce was never finalized because Petitioner claimed she had a right to one-half of Ducheneaux's interest in the five quarter sections of trust land on the reservation and he refused to acknowledge this claim. *Id.* at 15a. Petitioner later sued Ducheneaux in the federal district court in South Dakota, seeking to have the land divided, but the case was dismissed when the court held it did not have jurisdiction to partition the land. *Id.* at 16a.

Ducheneaux and Petitioner remained separated until Ducheneaux's death in 1980. At his death Ducheneaux left a will in which he designated that his entire trust estate should be divided between seven neices and nephews, the children of his half brother, all enrolled members of the Cheyenne River Sioux Tribe.

When Ducheneaux's trust estate was probated by the Secretary of the Interior, Petitioner filed a claim to one-half of the land Ducheneaux had acquired while the couple were married. She claimed a right to one-half of the property because, she alleged, she had contributed equally in the ranching operation during the marriage. She characterized this interest as a resulting or constructive trust. *Id.* at 3a. Ducheneaux's heirs disputed Petitioner's claim that she had contributed equally in the acquisition of the trust property purchased during the marriage.

The Administrative Law Judge (ALJ) of the Department of the Interior approved Ducheneaux's will, citing *Tooahnippah v. Hickel*, 397 U.S. 598 (1970),

and held that Ducheneaux had executed the will voluntarily, without duress, undue influence or mistake. The ALJ also found that Ducheneaux intended to disinherit his estranged wife. Finally, the ALJ held that the United States owed no trust responsibility to Petitioner because she is a non-Indian and could not, therefore, claim any interest in Ducheneaux's trust estate. Pet. App. 28a-33a.

Petitioner appealed the ALJ's decision to the Interior Board of Indian Appeals (IBIA). The IBIA upheld the decision of the ALJ, finding that "a resulting purchase money trust in Indian trust land cannot be claimed by persons to whom the federal government owes no trust responsibility" (*id.* at 47a). The IBIA also held that "as part of the Department's trust responsibility to those *Indians* who are involved in disputes over a decedent's trust estate" (*id.* at 45a, emphasis added), under 43 C.F.R 4.273(a), the ALJ possessed the authority to consider "alleged legal error in the BIA's inventory of estate assets during a probate proceeding" (*ibid.*).

Petitioner then filed suit in the district court, alleging jurisdiction under 5 U.S.C. §702, the Administrative Procedure Act (APA). Applying the scope of review set out at 5 U.S.C. §706, the district court reversed the decision of the Secretary of the Interior, holding that the decision was "contrary to law, unsupported by any substantial evidence, and is arbitrary and capricious" (Pet. App. 26a). The district court based its decision on a theory of "spousal contribution" (*id.* at 22a-26a), finding that the evidence in the record supported Petitioner's claim that she had contributed equally to the

acquisition of the property during the marriage. The district court's decision was based primarily on its reading of an estate taxation case, *Craig v. United States*, 451 F.Supp. 373 (D.S.D. 1978), involving non-Indians, and on a case involving an Indian couple divorced in a tribal court where the court divided the trust land acquired during the marriage between the parties, *Conroy v. Frizzell*, 429 F.Supp. 918 (D.S.D.) *affirmed*, 575 F.2d 175 (8th Cir. 1978). Pet. App. 23a-24a. The district court found that because one-half of the property acquired during the marriage was Petitioner's, Ducheneaux had no authority to will it to other family members. *Id.* at 25a.

A panel of the court of appeals, without dissent, reversed the district court's decision, noting that although the district court had "persuasive equitable reasons" for ruling as it did, that the court erred by not applying the Quiet Title Act (QTA), 28 U.S.C. §2409(a), and the cases interpreting the QTA, and by substituting its wishes for Ducheneaux's in overriding his valid will. Pet. App. at 2a-12a. Citing *United States v. Mottaz*, 106 S.Ct. 2224 (1986), the court of appeals observed that "The QTA prohibits a party from suing the United States when the purpose of the suit is to challenge the government's title to land held in trust for Indians" (Pet. App. 4a). The panel found that the purpose of Petitioner's suit against the United States was to challenge the government's title to Indian trust land and, therefore, the QTA prohibited the district court from having jurisdiction in the case. *Id.* at 5a.

The panel also found that Petitioner's claim that the district court had jurisdiction to hear her appeal

under the APA was invalid, following the reasoning in *Block v. North Dakota ex rel. Board of University and School Lands*, 461 U.S. 273 (1983). In *Block*, the court said, "the Supreme Court held that the QTA is the only means by which adverse claimants can challenge the United States' title to real property" (Pet. App. 5a). The reasoning in *Block*, the panel observed, had been followed by the Eighth Circuit in *Spaeth v. United States Secretary of the Interior*, 757 F.2d 937 (8th Cir. 1985) and by the Eleventh Circuit in *State of Florida v. United States Department of Interior*, 768 F.2d 1248 (11th Cir. 1985) *cert. denied*, 475 U.S. 1011 (1986). Pet. App. 5a-7a. The Court also found that Petitioner's claim that *Conroy v. Conroy*, 575 F.2d 175 (8th Cir. 1978), mandated that the Eighth Circuit uphold the district court's decision to divide the trust land acquired during the marriage was distinguishable because in *Conroy*, where both husband and wife were enrolled Indians, the issue of whether a party could sue the United States in order to divest the government of its title to trust land had not arisen. Pet. App. 8a-9a.

The district court's holding that it had the authority to overrule Ducheneaux's will, which had been found to be a rational testamentary disposition by the Secretary, was held by the panel to be contrary to two decisions of this Court, *Blanset v. Cardin*, 256 U.S. 319 (1921), and *Tooahnippah v. Hickel*, 397 U.S. 598 (1970). Pet. App. 9a-11a. Both *Blanset* and *Tooahnippah*, the panel observed, dealt with the power of an Indian to dispose of his or her trust estate by will under 25 U.S.C. §373. Unless the testator's will is irrational, this Court said in *Tooahnippah*, the Secretary does not have

the authority to "substitute his preference for that of an Indian testator" (379 U.S. at 608). The panel pointed out that the Ninth Circuit in *Akers v. Morton*, 499 F.2d 44 (9th Cir. 1974), *cert. denied*, 423 U.S. 831 (1975), had followed *Blanset* and *Tooahnippah* in holding that state dower law is not applicable when the Secretary had found the decedent's will to be rational and not technically deficient. Pet. App. 11a.

ARGUMENT

Petitioner argues to this Court that the court of appeals erroneously applied the QTA to the facts of this case and, second, that the court of appeals misunderstood the district court's opinion in holding that the lower court could not override Ducheneaux's valid will. Because Petitioner's arguments and authority do not show that the court of appeals' decision is in conflict with any decision of this Court or any other court of appeals, review by this court is not appropriate.

1. The QTA provides, in relevant part, that:

The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. *This section does not apply to trust or restricted Indian lands . . .*

28 U.S.C. §2409a (emphasis added).

This Court has said in two decisions, *United States v. Mottaz*, 106 S.Ct. 2224 (1986), and *Block v. North Dakota ex rel. Board of University and School Lands*,

416 U.S. 273 (1983), that the QTA does not waive the United States immunity from suit when the land in question is trust or restricted Indian lands. Pet. App. 5a. In *Mottaz* this Court found that:

“[The QTA] operates solely to retain the United States immunity from suit by third parties challenging the United States’ title to land held in trust for Indians. Thus, when the United States claims an interest in real property based on that property’s status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government’s immunity.”

106 S.Ct. at 2230.

In *Block* this Court addressed the exact issue raised by Petitioner here: does the APA waiver of sovereign immunity of the United States allow parties to sue the government when the dispute concerns the title to Indian trust land? This Court, unequivocally, said “no”.

“We hold that Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States’ title to real property.” 416 U.S. at 286.

In explaining why the language in the QTA does not waive the government’s immunity from suit when the challenge is to the United States title to land held in trust for Indians, this Court observed in *Mottaz* that:

“In urging that such an exemption be included in the Quiet Title Act, the Solicitor for the Department of the Interior noted that excluding suits against the United States seeking title to lands held by the United States in trust for Indians was necessary to prevent abridgement of ‘solemn obligations’ and ‘specific commitments’ that the Federal

Government had made to the Indians regarding Indian lands. A unilateral waiver of the Federal Government's immunity would subject those lands to suit without the Indians' consent. See H.R. Report No. 92-1559, p. 13 (1972) U.S. Code Cong. and Admin. News 1972, p. 4547."

106 S.Ct. at 2230 n. 6.

This Court's holding that the QTA does not waive the United States' immunity from suit when a third party seeks to divest the United States of its title to Indian trust land was followed by the Eighth Circuit both in this case and in *Spaeth v. United States Secretary of the Interior*, 757 F.2d 937 (8th Cir. 1985); by the Eleventh Circuit in *State of Florida v. United States Department of the Interior*, 768 F.2d 1248 (11th Cir. 1985), *cert. denied*, 475 U.S. 1011 (1986), and by the Ninth Circuit in *Wildman v. United States*, 827 F.2d 1306 (9th Cir. 1987) and in *Metropolitan Water District of Southern California v. United States*, 830 F.2d 139 (9th Cir. 1987).

In *Spaeth*, as the panel noted, the Eighth Circuit held that the QTA barred an action to adjudicate a disputed title to Indian real property in which the United States did not claim an interest. The court found that §702 of the APA did not waive the United States' immunity from suit because the language of §702 indicated it was preempted by the QTA's express provisions which forbid attempts to divest the United States of its title to trust land. 957 F.2d at 942.

In *State of Florida*, also relied upon by the court of appeals, Florida, too, was trying to utilize the APA to circumvent the government's immunity from suit under

the QTA when title to Indian land was being challenged. Relying on *Block*, the Eleventh Circuit rejected the state's argument, holding that "[T]he QTA is the exclusive means by which adverse claimants can challenge the United States' title to real property." 768 F.2d at 1254.

In the Ninth Circuit, in *Wildman*, the owners of property which adjoined a river tried to quiet title to land located in a riverstream bed. Even though the United States had only a colorable claim to the land as Indian trust land, the court held that that was sufficient to invoke the government's immunity from suit under the QTA. 827 F.2d at 1309.

Most recently, in *Metropolitan Water District of Southern California v. United States*, the United States was again sued under the APA when the plaintiffs sought a decree establishing reservation boundaries. The court held that even though the suit was not one where a third party was attempting to quiet title to Indian land for itself, the QTA still applied because the effect of a successful action would be to quiet title in others. 830 F.2d at 143.

This Court and the Eighth, Ninth and Eleventh Circuits have uniformly held that the QTA preempts application of the APA in suits challenging the United States' title to Indian trust land and, further, that the QTA itself expressly forbids suits seeking to divest the United States or its title to Indian trust land. Thus, when Petitioner sued the United States in the district court seeking an order which would have deprived the government of its title to the land it held in trust for

Ducheneaux, the court of appeals was correct in holding that the district court was without jurisdiction to hear her complaint.

Petitioner argues, without citing any authority to support her claim, that the QTA is not applicable to this case and that the cases cited by the circuit court are distinguishable because the facts and parties are different. Pet. 6. Petitioner's unsupported assertion that the QTA does not apply in this case, when the facts, cited *supra*, clearly show that she seeks to divest the United States of its title to Indian trust land, has no merit.

Petitioner also argues, relying on a brief filed by the Department of the Interior, Office of the Solicitor, to the IBIA, that the Secretary had a duty to modify the inventory in Ducheneaux's estate, under 43 C.F.R. §4.273, based on the evidence she submitted showing her contribution to the acquisition of trust lands during the marriage. Pet. 5-6. The IBIA did in fact incorporate the Solicitor's views regarding challenges to the inventory in a decedent's trust estate in its opinion, providing for such challenges under 43 C.F.R. §4.273. Pet. App. 45a. The IBIA, however, made clear that the kinds of challenge it would consider concerned "those *Indians* who are involved in disputes over a decedent's trust estate" (Pet. App. 45a), and not challenges by non-Indians, "to whom the government owes no trust responsibility" (Pet. App. 47a). The IBIA view regarding challenges to estate inventories, although not specifically mentioned by the court of appeals, is entirely consistent with the opinions of this Court and other courts of appeals in that it allows the Secretary to

settle disputes between Indians over title to Indian trust land but does not purport to allow non-Indians to challenge the United States' title to Indian trust land, which is forbidden by the QTA.

Petitioner also argues that the Eighth Circuit's decision in *Conroy v. Conroy*, 575 F.2d 175 (8th Cir. 1978), requires that she be awarded one-half of the trust land acquired during the marriage, because in *Conroy* the court upheld a tribal court decision which ordered a division of marital property, including Indian trust land, between Indian spouses. Pet. 7. The court of appeals' response to Petitioner's reliance on *Conroy* was correct. The significant distinction between *Conroy* and the facts of this case, as the panel noted, is that in *Conroy* the Eighth Circuit was recognizing the validity of a decree of divorce from a tribal court of competent jurisdiction where both parties were members of the Oglala Sioux Tribe, whereas here Petitioner is asking the court to award her, a non-Indian, one-half of the trust land acquired during the marriage. Pet. App. 8a-9a. What Petitioner asks the Court to do is exactly what is prohibited by the QTA, divesting the government of its title to Indian trust land.

Petitioner also alleges that she is being discriminated against on the basis of race, citing *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), because the Eighth Circuit has held that Indians are allowed to have trust land divided in tribal court based on a spouse's showing that he or she contributed to the acquisition of the property, while Petitioner is not allowed to challenge the title to Indian trust property in Ducheneaux's estate, which she alleges was acquired

jointly during their marriage. Pet. 7. *Bakke* and this case are distinguishable. In *Bakke* this Court invalidated a medical school special admission program because it was found to be inconsistent with Title VII of the Civil Rights Act of 1964 which prohibits discrimination on racial or ethnic grounds in federally assisted programs. The discrimination prohibited by this Court in *Bakke* is not analogous to the Secretary's refusal to award Petitioner a share of Ducheneaux's trust estate, even assuming Petitioner had in fact shown that she contributed equally to the acquisition of the land purchased during the marriage, which the non-federal Respondents do not concede. This Court has held that there are permissible distinctions which may be drawn between Indians and non-Indians, which distinctions include the rules applicable to Indian trust property. In *Morton v. Mancari*, 417 U.S. 535 (1974), this Court said that:

"On numerous occasions this Court has specifically upheld legislation that singles out Indians for particular and special treatment.

. . . .

This unique legal status is of long standing, (citations omitted) and its sources are diverse.

. . . .

As long as the special treatment can be tied rationally to the fulfillment of Congress' unique legal obligation towards Indians, such legislative judgments will not be disturbed."

Id. at 554-555.

Morton v. Mancari is, in fact, specifically distinguished in *Bakke*, 438 U.S. 304 n. 47.

2. Petitioner also argues that the court of appeals erred when it held that the district court was without authority to override Ducheneaux's validly executed will. Petitioner's argument, essentially, is that the appeals panel should not have characterized the district court's decision as overruling the decedent's intent in his will but, rather, should have described the lower court ruling as simply removing improperly included property from Ducheneaux's estate inventory. Pet. 8. Petitioner's claim is without merit and, as shown by the authority cited *supra*, the district court did not have the authority to order the Secretary to remove Indian trust property from Ducheneaux's estate for the benefit of Petitioner, a non-Indian, because the QTA forbids any attempt to divest the United States of its title to Indian trust land.

The appeals panel was correct in holding that the district court did not have the power to substitute its preference for that of the decedent in the distribution of his trust estate once the Secretary had found that the will was neither technically deficient or irrational, based on this Court's decision in *Blanset v. Cardin*, 256 U.S. 319 (1921), and *Tooahnippah v. Hickel*, 397 U.S. 598 (1970), and on the Ninth Circuit's decision in *Akers v. Morton*, 499 F.2d 44 (9th Cir. 1974), *cert. denied*, 423 U.S. 831 (1975). Pet. App. 9a-11a.

As the court of appeals noted, the facts of *Blanset* are very similar to those in this case. In *Blanset* a non-Indian spouse sought one-third of his deceased Indian wife's trust estate, when she had specifically disinherited him and had left her estate to her children and grandchildren. This Court held that 25 U.S.C. §373,

which governs the disposition of Indian trust property by will, controlled, thus allowing Indians to dispose of their property free from the law of the state in which they resided.

“[I]t was the intention of Congress that this class of Indians should have the right to dispose of property by will under this act of Congress (25 U.S.C. §373), free from restrictions on the part of the State as to the portions to be conveyed or as to the objects of the testator’s bounty, provided such wills are in accordance with the regulations and meet the approval of the Secretary of the Interior.”

326 U.S. at 326-27.

In 1970, in *Tooahnippah v. Hickel*, (1970), this Court again addressed the question of the extent of an Indian testator’s right to disinherit a close relative in favor of more distant relatives. In *Tooahnippah* this Court had to decide whether the Secretary had the authority under 25 U.S.C. §373 to substitute his wishes for that of the testator, when the Secretary felt the decedent had not treated his closest heir fairly. This Court found that:

“. . . [N]othing in the statute or its history or purpose . . . vests in a governmental official the power to revoke or rewrite a will that reflects a rational testamentary scheme with a provision for a relative who befriended the testator and omission of one who did not, simply because of a subjective feeling that the disposition of the estate was not ‘just and equitable’.” (Footnote omitted)

397 U.S. at 610.

The *Blanaset* and *Tooahnippah* decisions have been followed by the Ninth Circuit, the only other court of

appeals to have been faced with the question of the extent of an Indian testator's authority to dispose of his trust property by will under 25 U.S.C. §373. In *Akers v. Morton*, discussed by the appeals panel in this case, the Ninth Circuit said it was bound to follow this Court's rulings in *Blanaset* and *Tooahniopah* and to abide by the requirements of 25 U.S.C. §373, even though it felt the result to be inequitable. 499 F.2d at 47-48. In *Akers* an Indian disinherited his Indian wife of all his interest in trust land in favor of a more distant relative, even though the facts showed her money had been used to purchase the property which had been placed in trust in his name, with the legal title held by the United States. Citing *Tooahnippah*, 397 U.S. at 410, the court said that "The Secretary may disapprove a will only if it is technically deficient or if it is irrational. Where, as in this case, it is rational . . . the Supreme Court has indicated that the Secretary is not free to disapprove the will merely on notions of fairness or equity." *Akers*, 499 F.2d at 47.

Contrary to Petitioner's assertions, *Akers* does not support her claim that she should be awarded one-half of the trust property acquired during the marriage. Petitioner alleges that "Petitioner's claim to an interest in the property was established in the course of the probate of her husband's estate . . ." (Pet. 8). In *Akers* the facts were clear that the disinherited spouse's funds were used to purchase the decedent's trust land, whereas in this case neither the ALJ or the IBIA made such a finding (Pet. App. 31a and 39a-40a), nor did the court of appeals. Pet. App. 3a.

Petitioner also claims that the Ninth Circuit's observation, made in a footnote, that a resulting trust theory was not raised in *Akers*, thus preventing that court from considering whether the restricted land was properly included in Mr. Akers' estate, should have been addressed in this case by the court of appeals. 499 F.2d at 46 n. 1. What is critical to remember about *Akers*, and what Petitioner refuses to acknowledge, is that the disinherited spouse in *Akers* was an Indian, while Petitioner is not. Thus, even if a resulting trust theory had been considered in *Akers*, and if the court had ultimately decided the restricted land should not have been included in Mr. Akers' trust estate, the outcome in *Akers* would have had no effect on the legal title to the land, since it would have remained in trust for Mrs. Akers. Here, as noted *supra*, acquiescence to Petitioner's claim would divest the United States of its title to a portion of Ducheneaux's trust estate. The QTA prohibits this and both the ALJ and the IBIA found that Petitioner's claim to a resulting trust interest in the decedent's trust estate was not permissible because the United States cannot hold restricted property for persons to whom the government owes no trust responsibility. Pet. App. 30a and 47a.

Finally, Petitioner relies on this Court's decision in *Bailess v. Paukune*, 344 U.S. 171 (1952), to support her assertion that the interest in trust land she claims is "dry and passive" and that all the Secretary needs to do is perform the ministerial act of issuing her a fee patent. Pet. 7. Petitioner completely misreads *Bailess v. Paukune*. In *Bailess*, as Petitioner notes, the non-

Indian widow inherited a portion of her Indian husband's estate under his will. Thus, although she had a legal right to title to the land, "the United States had no interest of hers in the land to protect . . . she is not within the class whom Congress sought to protect . . . " (344 U.S. at 173), and a fee patent had to be issued to her. Here, of course, Ducheneaux specifically disinherited Petitioner (Pet. App. 3a, 16) and 25 U.S.C. §373 and this Court's decisions, discussed *supra*, allowed him to do that. Because the decedent in *Bailess* wanted his spouse to have a portion of his trust estate, this Court's discussion about the nature of the United States' duty to a non-Indian spouse and the method of removing land from trust status has nothing to do with this case. The intent of Ducheneaux, which is totally ignored by Petitioner, is the critical distinguishing factor.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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